RECEIVED
NOV 2001

(12) (13)

Nos. 00-1531 & 00-1711

Supreme Court, U.S.
FILED
NOV 26 2001
CLERK

IN THE

Supreme Court of the United States

VERIZON MARYLAND INC.,
Petitioner,

v.

PUBLIC SERVICE COMMISSION OF MARYLAND, ET AL.,
Respondents.

UNITED STATES OF AMERICA,
Petitioner,

v.

PUBLIC SERVICE COMMISSION OF MARYLAND, ET AL.,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF FOR PETITIONER VERIZON MARYLAND INC.

WILLIAM P. BARR
MARK J. MATHIS
MICHAEL D. LOWE
JOHN P. FRANTZ
1515 N. Court House Road
Suite 500
Arlington, Virginia 22201
(703) 351-3103

DAVID A. HILL
1 East Pratt Street
Baltimore, Maryland 21202
(410) 393-7725

MARK L. EVANS*
MICHAEL K. KELLOGG
SEAN A. LEV
AARON M. PANNER
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

**Counsel of Record*

November 26, 2001

26 P

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

ARGUMENT:

I. A STATE COMMISSION DECISION INTERPRETING AN INTERCONNECTION AGREEMENT IS AN EXERCISE OF FEDERAL STATUTORY AUTHORITY THAT IS SUBJECT TO FEDERAL JUDICIAL REVIEW 2

II. FEDERAL COURTS HAVE JURISDICTION UNDER § 1331 TO REVIEW DECISIONS MADE BY STATE OFFICIALS EXERCISING FEDERAL STATUTORY AUTHORITY 7

III. THE *ROOKER-FELDMAN* DOCTRINE IS INAPPLICABLE TO DECISIONS OF ADMINISTRATIVE AGENCIES 17

CONCLUSION 19

TABLE OF AUTHORITIES

Page

CASES

AT&T Communications of Southern States, Inc. v. BellSouth Telecomms., Inc., 229 F.3d 457 (4th Cir. 2000) 4

AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999) ..... *passim*

Abbott Labs. v. Gardner, 387 U.S. 136 (1967) . 10, 11

Bank One Chicago, N.A. v. Midwest Bank & Trust Co., 516 U.S. 264 (1996) 16, 17

Begay v. Kerr-McGee Corp., 682 F.2d 1311 (9th Cir. 1982) 12

Bell v. Hood, 327 U.S. 678 (1946) 7

Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667 (1986) 11

California v. Sierra Club, 451 U.S. 287 (1981) 9

Chicago, R.I. & P.R.R. v. Stude, 346 U.S. 574 (1954) 11

Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971) 10

City of Chicago v. International College of Surgeons, 522 U.S. 156 (1997) ..... *passim*

College Savings Bank v. Florida Prepaid Post-secondary Education Expense Bd., 527 U.S. 666 (1999) 4

Cort v. Ash, 422 U.S. 66 (1975) 8

Cousins v. Secretary of United States Dep't of Transp., 880 F.2d 603 (1st Cir. 1989) 8

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) 1, 17

Fielder v. Credit Acceptance Corp., 188 F.3d 1031 (8th Cir. 1999) 19

Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1 (1983) 11

International Ass'n of Machinists v. Central Airlines, Inc., 372 U.S. 682 (1963) 13, 14

Jackson Transit Auth. v. Local Div. 1285, Amalgamated Transit Union, 457 U.S. 15 (1982) 13

Lutheran Brotherhood Variable Ins. Prods. Co. Sales Practices Litig., In re, 105 F. Supp. 2d 1037 (D. Minn. 2000) 19

MCI Telecomms. Corp. v. Illinois Bell Tel. Co., 222 F.3d 323 (7th Cir. 2000), *cert. denied*, 121 S. Ct. 896 (2001) 9

McNary v. Haitian Refugee Center, Inc., 498 U.S. 479 (1991) 8

NAACP v. Secretary of HUD, 817 F.2d 149 (1st Cir. 1987) 8, 9

Printz v. United States, 521 U.S. 898 (1997) 17

Railway Co. v. Whitton's Adm'r, 80 U.S. (13 Wall.) 270 (1872) 12

Reno v. Catholic Social Services, Inc., 509 U.S. 43 (1993) 8

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) 1, 17

Stark v. Wickard, 321 U.S. 288 (1914) 10

Steel Co. v. Citizens for a Better Environment, 523 U.S. 83 (1998) 7

TRW Inc. v. Andrews, No. 00-1045 (U.S. Nov. 13, 2001) 12

Thurston Motor Lines, Inc. v. Jordan K. Rand Ltd., 460 U.S. 533 (1983) 14

Young, Ex parte, 209 U.S. 123 (1908) 2

ADMINISTRATIVE DECISIONS

Memorandum Opinion and Order, *Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, 15 FCC Rcd 11277 (2000) 9-10

Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 FCC Rcd 9151 (2001), *petitions for review pending*, Nos. 01-1218 *et al.* (D.C. Cir.) 15

CONSTITUTION AND STATUTES

U.S. Const. Amend. XI 2

Civil Rights Act of 1968, Tit. VIII, 42 U.S.C. §§ 3601 *et seq.* 8

Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*:

47 U.S.C. § 251 ..... 3, 4, 14

47 U.S.C. § 251(b) 5, 6

47 U.S.C. § 251(c) 5, 6, 7

47 U.S.C. § 251(c)(1) 5, 14

47 U.S.C. § 251(c)(2)(D) 14

47 U.S.C. § 251(c)(3) 5, 6, 14

47 U.S.C. § 251(c)(4) 5

47 U.S.C. § 251(c)(6) 5

47 U.S.C. § 252 ..... 3, 4, 9, 14

47 U.S.C. § 252(a)(1) 5, 12, 13, 14

47 U.S.C. § 252(d)(1) 5

47 U.S.C. § 252(e) 16

47 U.S.C. § 252(e)(2)(B) 3

47 U.S.C. § 252(e)(4) 3, 4

47 U.S.C. § 252(e)(5) 9

47 U.S.C. § 252(e)(6) 3, 10

47 U.S.C. § 252(h) 14

47 U.S.C. § 252(i) 6, 7, 14

Expedited Funds Availability Act, 12 U.S.C. §§ 4001 *et seq.* 16

Hobbs Act, 28 U.S.C. §§ 2341 *et seq.* 10

Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* 18

Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. § 403 9

Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ..... *passim*

28 U.S.C. § 1257(a) 18

28 U.S.C. § 1331 ..... *passim*

28 U.S.C. § 1367 18

Md. Code Ann., Pub. Util. Cos. (1998):

§ 3-102(a)(2) 16

§ 3-202 11

§ 3-206(b)(2) 12

OTHER MATERIALS

Restatement (Second) of Contracts (1981) 5

IN THE

Supreme Court of the United States

No. 00-1531

VERIZON MARYLAND INC.,
Petitioner,

v.

PUBLIC SERVICE COMMISSION OF MARYLAND, ET AL.,
Respondents.

No. 00-1711

UNITED STATES OF AMERICA,
Petitioner,

v.

PUBLIC SERVICE COMMISSION OF MARYLAND, ET AL.,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF FOR PETITIONER VERIZON MARYLAND INC.

Respondent Maryland Public Service Commission ("PSC") defends the Fourth Circuit's § 1331 holding on two grounds. First, it maintains that Verizon has no private right of action under federal law to challenge the PSC's determination. Second, it argues that the Fourth Circuit correctly held that the *Rooker-Feldman* doctrine forecloses federal court review of state administrative adjudications. These arguments reflect a profound misunderstanding of both the Telecommunications Act of 1996 ("1996 Act") and the

principles governing the jurisdiction of the federal courts.[1]

ARGUMENT

I. A STATE COMMISSION DECISION INTERPRETING AN INTERCONNECTION AGREEMENT IS AN EXERCISE OF FEDERAL STATUTORY AUTHORITY THAT IS SUBJECT TO FEDERAL JUDICIAL REVIEW

At the core of its arguments is the PSC's fundamental unwillingness to accept this Court's determination that, "[w]ith regard to the matters addressed by the 1996 Act," Congress "unquestionably" "has taken the regulation of local telecommunications competition away from the States." *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n.6 (1999). Though Congress offered states an opportunity to "participat[e] in the administration of the new *federal* regime" (*id.*), it did so with the understanding that, when a state accepts the offer and voluntarily exercises federal regulatory authority, its determinations will be subject to review in a federal district court. As this Court pointedly observed, one thing about which "there is no doubt" is "that if the federal courts believe a state commission is not regulating in accordance with federal policy they may bring it to heel." *Id.*

[1] The PSC devotes a substantial portion of its brief to arguing that the PSC and its members are immune from suit in federal court under the Eleventh Amendment. PSC Br. 26-42. Although the petitions for writs of certiorari in these cases presented two Eleventh Amendment questions (waiver and *Ex parte Young*), the Court limited its grant of certiorari to the § 1331 question. Verizon accordingly did not argue the Eleventh Amendment issues in its opening brief, *see* Verizon Br. 30 n.11, and will refrain from responding to the PSC's Eleventh Amendment arguments in this reply brief. The Eleventh Amendment issues are before the Court in *Mathias v. WorldCom Technologies, Inc.*, No. 00-878, and the briefs of the respondents and of *amici curiae* BellSouth Corporation, *et al.*, in that case discuss and thoroughly refute the same arguments that the PSC makes in this case.

The PSC has taken full advantage of the opportunity to administer the federal regime, not only arbitrating and approving initial agreements, but also resolving interpretive disputes. It claims here, however, that its administrative determinations — at least those involving the interpretation or enforcement of interconnection agreements — are subject only to state court review.

But even if the Court decides, in No. 00-878, that § 252(e)(6) does not authorize federal judicial review of decisions interpreting and enforcing interconnection agreements, it by no means follows that the federal courts are without subject matter jurisdiction. Because 1996 Act interconnection agreements are instruments of federal regulation, and because the PSC's interpretation of such an agreement is an exercise of federal regulatory authority, actions seeking judicial review of such interpretive decisions arise under federal law and therefore properly invoke the district court's general federal-question jurisdiction under § 1331.

When a state commission interprets and applies the requirements of the 1996 Act in the course of arbitrating and approving an agreement — that is, when it decides whether an agreement "meet[s] the requirements" of §§ 251 and 252 (47 U.S.C. § 252(e)(2)(B)) — the statute both expressly permits federal court review (*id.* § 252(e)(6)) and expressly *prohibits* state court review (*id.* § 252(e)(4)). But identical legal issues may arise when a state commission interprets and enforces an agreement that has already been approved. That is most apparent where a dispute arises over the meaning of a requirement that the state commission imposed during arbitration. In that circumstance, the requirements of the 1996 Act and the obligations set forth in the parties' interconnection agreement are not "different sides of the same coin — they are the same side of

the same coin." *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Bd.*, 527 U.S. 666, 683 (1999).

When a state commission interprets an interconnection agreement in such circumstances, it performs the precise function that Congress determined should be subject to exclusive federal review: elaboration of the substantive statutory obligations imposed by the 1996 Act. It is difficult to imagine why Congress, having provided for *exclusive* federal court review of initial approval determinations, would have *prohibited* federal court review when the same function is performed after approval. If that were its intention, one would expect to see a provision mirroring the preclusive language of § 252(e)(4). *See* Verizon Br. 32-34; U.S. Br. 21-22.

That is no less true in the case of agreements reached through negotiation rather than arbitration. When a state commission interprets a negotiated agreement, it likewise performs a function that is equivalent to the arbitration and approval function under § 252. As an initial matter, parties often adopt provisions through mutual agreement that precisely track the requirements of federal law (as, indeed, the parties did here). *See AT&T Communications of Southern States, Inc. v. BellSouth Telecomms., Inc.*, 229 F.3d 457, 465 (4th Cir. 2000) ("many so-called 'negotiated' provisions represent nothing more than an attempt to comply with the requirements of the 1996 Act"). In that circumstance, again, interpretation of an agreement *is* an elaboration of the 1996 Act's requirements.

But even when a state commission interprets a negotiated agreement containing terms that do not track the precise requirements of §§ 251 and 252, its decision still amounts to an elaboration of obligations imposed by the 1996 Act. That is so because an interconnection agreement reached through negotiation is

not a voluntary, private commercial contract, and its enforcement is not a matter of ordinary contract law. Section 251(c)(1) requires incumbent LECs to enter into interconnection agreements upon a competing carrier's request. Such agreements "fulfill" the duties prescribed ~~in~~ § 251(b) and (c). 47 U.S.C. § 251(c)(1). Those provisions impose on incumbent LECs extraordinary obligations to provide affirmative assistance to their competitors, forcing incumbent LECs, for example, to surrender their network equipment at prices set by regulators at cost (*id.* §§ 251(c)(3), 252(d)(1)); to accommodate the equipment of competitors on their private property (*id.* § 251(c)(6)); and to make services available for resale at a discount determined by regulators (*id.* § 251(c)(4)). Incumbent LECs must do all of this whether or not it promotes their business interests — indeed, despite the fact that such assistance to competitors may well ultimately undermine their business interests.

To be sure, the specific terms of interconnection agreements may be worked out by the parties in negotiation. *Id.* § 252(a)(1). But that is a detail: the duty to enter into such arrangements in the first place, and the baseline requirements on which competitors may insist, are indisputably imposed by the 1996 Act. Interconnection agreements are therefore instruments of coercive federal power; they do not reflect the parties' mutual assent to enter into a binding exchange of promises. *Cf.* Restatement (Second) of Contracts §§ 17, 71 (1981). Accordingly, when a state commission interprets a term reached through negotiation, and dictates the obligations to which the parties are subject, the state commission has elaborated requirements imposed by federal law no less than in those cases where the determination is directly governed by the provisions of the 1996 Act itself. The state commission, in

either case, "participat[es] in the administration of the new *federal* regime." *AT&T*, 525 U.S. at 378 n.6.

Such determinations differ sharply from private-law adjudication in other ways as well. As an initial matter, the 1996 Act *requires* incumbent LECs to provide service in accordance with the terms of interconnection agreements. *See, e.g.*, 47 U.S.C. § 251(c)(3). Unlike parties to a private commercial contract, the parties to an approved interconnection agreement may not simply agree not to abide by the terms of their agreement.

If there were any doubt that interpretation and enforcement decisions have federal regulatory consequences, § 252(i) resolves it. That provision requires incumbent LECs to make "any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i). *See AT&T*, 525 U.S. at 395-96. By operation of § 252(i), any obligation undertaken through negotiation becomes a public-law duty that extends to all telecommunications carriers, equivalent to the obligations imposed under § 251(b) and (c). Accordingly, when a state commission interprets and enforces an interconnection agreement, including the negotiated terms in such an agreement, its decision is not merely an exercise in private contract interpretation; it also determines the scope of the incumbent LEC's federal statutory obligations under § 252(i).[2]

---

[2] *Amicus* State of Illinois completely ignores the significance of § 252(i) in its fanciful account of "real world cost-benefit analysis employed in contracting." Illinois Br. 14. Because of § 252(i), an incumbent LEC cannot make concessions to one competitor without providing the same concessions to every other competitor that requests them. *See* Verizon Br. 4 ("an incumbent cannot safely engage in ordinary 'give-and-take'") (citing *AT&T*, 525 U.S. at 395). Likewise, a competing carrier need not make any concessions in negotiating an agreement, because it can always simply avail itself of its opt-in right under § 252(i) to pick and choose the best available terms implementing the requirements of § 251(c).

Congress adopted § 252(i) because it recognized that the federal statutory obligations take concrete form through interconnection agreements, arbitrated *and* negotiated. For precisely that reason, all state commission decisions determining the scope of obligations imposed through interconnection agreements — whether reached before or after approval — must be subject to the same federal court review.

II. FEDERAL COURTS HAVE JURISDICTION UNDER § 1331 TO REVIEW DECISIONS MADE BY STATE OFFICIALS EXERCISING FEDERAL STATUTORY AUTHORITY

A. The PSC's lead argument is that Verizon lacks a private right of action under the 1996 Act. PSC Br. 11-25. But that argument conflates the district court's subject matter jurisdiction with the merits of Verizon's claims. As this Court recently reiterated, "[i]t is firmly established in our cases that the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89 (1998). "Rather, the district court has jurisdiction if 'the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another.'" *Id.* (quoting *Bell v. Hood*, 327 U.S. 678, 685 (1946)). Here, Verizon seeks to enjoin enforcement of a PSC order on the ground that it violates federal law. There can be no serious doubt — whatever the cause of action — that Verizon's right to relief therefore depends on the proper construction of governing federal law.

In any event, the PSC misconceives the nature of Verizon's claims. As the PSC itself recognizes, Verizon's suit was an action for "federal court review of an order" of the PSC. PSC Br. 2. Verizon seeks review to ensure that a *regulator* has acted in conformity with the requirements of the very federal statute that the regulator is administering. In that circumstance, a *federal* right to judicial review is presumed, and such review is a basic component of federal courts' jurisdiction under § 1331. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 56 (1993); *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 494 (1991). No "private right of action" is required to secure such review, and the inquiry described in *Cort v. Ash*, 422 U.S. 66 (1975), is inapposite.

The First Circuit, in an opinion by then-Judge Breyer, explained this pivotal distinction in *NAACP v. Secretary of HUD*, 817 F.2d 149 (1st Cir. 1987). The plaintiff there argued that it had a "private right of action" to enforce obligations that a federal statute (Title VIII of the Civil Rights Act of 1968) imposed on the federal agency administering the statute. *Id.* at 152. After noting that no private right of action was available under Title VIII, the court observed that the "private right of action" inquiry did not fit the situation where a private party seeks review of federal agency action, because such "federal action is nearly always reviewable for conformity with statutory obligations." *Id. See also Cousins v. Secretary of United States Dep't of Transp.*, 880 F.2d 603, 606 (1st Cir. 1989) (en banc) (Breyer, J.).

A private right of action is needed in the quite different situation where a private individual seeks a remedy for an injury inflicted by actions that allegedly violate federal law but are not an exercise of federal administrative authority. *See NAACP*, 817 F.2d at 152. To be sure, such actions may be taken by a state

or other non-federal government actor. For example, in *California v. Sierra Club*, 451 U.S. 287 (1981), the Court considered whether a private individual could sue to enforce the Rivers and Harbors Appropriation Act of 1899, which prohibits the "creation of any obstruction" in the navigable waters of the United States. 33 U.S.C. § 403. Relying on the 1899 Act, the plaintiff sought to enjoin the defendants — including the State of California — from operating or constructing water diversion facilities. In that situation — where state action allegedly ran afoul of a distinct federal statute (but was not an exercise of federal regulatory power) — a private plaintiff may proceed only if the statute provides a private right of action "to enforce the federal statute directly against the non-federal person." *NAACP*, 817 F.2d at 152.

What distinguishes this case from *Sierra Club* is that the agency here, though created by state law, was in fact exercising federal regulatory authority, having elected to "participat[e] in the administration of the new *federal* regime." *AT&T*, 525 U.S. at 378 n.6. As the Seventh Circuit aptly put it, a state commission acts as a "deputized" federal regulator and "regulat[es] on behalf of Congress" when it enforces a 1996 Act interconnection agreement. *MCI Telecomms. Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 343, 344 (7th Cir. 2000), *cert. denied*, 121 S. Ct. 896 (2001). The PSC was therefore a federal, not a non-federal, actor, in the jurisdictionally relevant sense. Had the PSC not exercised the authority conferred by Congress — had it declined to "carry out its responsibility" under § 252 — the Federal Communications Commission ("FCC") would have interpreted and enforced the interconnection agreement in its stead. *See* 47 U.S.C. § 252(e)(5).[3]

---

[3] That is precisely what happened when the Virginia State Corporation Commission declined to exercise its authority under § 252 to "interpret and enforce" an interconnection agreement. *See* Memorandum

In that event, even if judicial review were not expressly authorized by the Hobbs Act, there can be no doubt that judicial review would be available in federal court under § 1331. *See, e.g., Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971); *Abbott Labs. v. Gardner*, 387 U.S. 136, 140 (1967) ("judicial review of a final agency action . . . will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress").

The result should be no different here, because the regulatory regime is no less "federal" in nature even when it is "administered by 50 independent state agencies." *AT&T*, 525 U.S. at 378 n.6; *see also* PSC Br. 18 ("primary responsibility for overseeing the implementation of §§ 251 and 252 remains with State administrative agencies"). Verizon is no less subject to an exertion of federal administrative authority when that authority is wielded by the PSC rather than the FCC. Because Verizon's claim is that the PSC's decision constitutes "the exertion of unauthorized administrative power" under a *federal* statute, its claims fall within the jurisdiction of federal courts. *Stark v. Wickard*, 321 U.S. 288, 310 (1944).

For this reason, the burden is on the PSC to identify "'clear and convincing evidence'" of Congress's intent to "restrict access" to federal judicial review. *Abbott Labs.*, 387 U.S. at 141; Verizon Br. 30-35. The PSC ignores this standard, and instead argues that, because Congress affirmatively authorized review under § 252(e)(6), its failure to do so in cases involving a state commission's interpretation or enforcement of an interconnection agreement (assumed for the purposes of this case) implies an intention to foreclose federal

---

Opinion and Order, *Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, 15 FCC Rcd 11277, 11280, ¶ 7 (2000).

court review. PSC Br. 16. But that argument is inconsistent with this Court's prior holding that "[t]he mere fact that some acts are made reviewable *should not suffice to support an implication of exclusion as to others*." *Abbott Labs.*, 387 U.S. at 141 (emphasis added; internal quotation marks omitted); *see also Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667, 675 (1986). In the absence of *affirmative* evidence of intent to foreclose review — and the PSC does not and cannot offer any — this Court should conclude that Congress intended all state commission actions taken in the exercise of federal authority under the 1996 Act to be subject to federal judicial review. That conclusion flows naturally from the Court's recognition in *AT&T* that "if the federal courts believe a state commission is not regulating in accordance with federal policy they may bring it to heel." 525 U.S. at 378 n.6.[4]

---

[4] Even if, as the PSC suggests, Verizon's cause of action were created by Maryland's statutory judicial review provision (*see* Md. Code Ann., Pub. Util. Cos. § 3-202 (1998)), the district court would still have jurisdiction over such a claim because Verizon's "'right to relief under state law requires resolution of a substantial question of federal law.'" *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 164 (1997) (quoting *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 13 (1983)).

Amicus Illinois — but not the PSC — argues that, insofar as Verizon's cause of action rests on Maryland's statutory judicial review provision, this suit does not qualify as a "civil action" within the meaning of § 1331. Illinois Br. 24-29. But Illinois's principal authority for that proposition is the very Seventh Circuit decision that this Court reversed in *City of Chicago*. As this Court stated in rejecting the same argument there, an action for judicial review of an agency adjudication — for example, an administrative condemnation proceeding — "is 'in its nature a civil action and subject to removal by the defendant to the United States District Court.'" *City of Chicago*, 522 U.S. at 170 (quoting *Chicago, R.I. & P.R.R. v. Stude*, 346 U.S. 574, 578-79 (1954)). "[D]istrict courts routinely conduct deferential review pursuant to their original jurisdiction over federal questions, including on-the-record review of federal administrative action." *Id.* at 171. Under Maryland law, moreover, actions for review of administrative decisions are defined as civil actions.

B. Regardless of the source of Verizon's cause of action, its claims arise under federal law and are within the district court's § 1331 jurisdiction. As we explained in our opening brief, that is true for at least three reasons; the PSC's counter-arguments are unavailing.

First, § 252(a)(1) specifically provides that interconnection agreements are "binding." Verizon's claim that the PSC has imposed obligations inconsistent with the terms of its "binding" agreements therefore alleges a direct violation of Verizon's federal statutory right. Verizon Br. 17-20.[5] Such a claim, "which turn[s] exclusively on federal law, unquestionably fits" within the district court's original jurisdiction. *City of Chicago*, 522 U.S. at 164. The PSC simply ignores this argument. *Amicus* Illinois claims that the position is "odd" because Verizon "has maintained that the disputed reciprocal compensation provisions at issue in this case" track the requirements of federal law. Illinois Br. 11 n.1. That response is a non-sequitur. Verizon's position here is that the parties, pursuant to § 252(a)(1), negotiated an agreement that tracks the

---

See Md. Code Ann., Pub. Util. Cos. § 3-206(b)(2) (1998) (providing that proceedings for judicial review shall be given precedence "over all *other* civil actions") (emphasis added). It is of course irrelevant that Maryland law designates state court as the proper venue for such an action; Maryland cannot deprive federal courts of jurisdiction granted by Congress under § 1331. *See Railway Co. v. Whitton's Adm'r*, 80 U.S. (13 Wall.) 270, 286 (1872); *Begay v. Kerr-McGee Corp.*, 682 F.2d 1311, 1315 (9th Cir. 1982).

[5] Section 252(a)(1) may not plausibly be dismissed as intended simply to permit agreements that stray from the 1996 Act's duties. *See* PSC Br. 22; Illinois Br. 11-13. Congress could have accomplished *that* objective without including the term "binding." Its inclusion must therefore be understood to have independent significance. *See, e.g., TRW Inc. v. Andrews*, No. 00-1045, slip op. at 10-11 (U.S. Nov. 13, 2001) (applying "cardinal principle" that a statute should be construed, if possible, so that "no clause, sentence, or word shall be superfluous, void, or insignificant") (internal quotation marks omitted).

requirements of federal law. The PSC imposed obligations on Verizon that are inconsistent both with federal law *and* (for that reason) with the parties' agreement. It is the *latter* inconsistency that is relevant for purposes of Verizon's claim of violation of its federal right to a "binding" agreement under § 252(a)(1).

Second, the underlying obligations at issue in this case — which form the substantive basis of Verizon's claim — are federal in nature because the interconnection agreement is a federal contract. Verizon Br. 20-25. The PSC, joined by WorldCom, disputes this point, arguing that interconnection agreements are simply state-law contracts the interpretation and enforcement of which raise only issues of state law to be resolved by state courts. PSC Br. 20-21; WorldCom Br. 19-20. Both rely on *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union*, 457 U.S. 15 (1982), in which this Court held that employment contracts between local governments and their employees, though required by federal law as a condition of receiving certain federal financial assistance, were controlled by state law, and that a suit to enforce such a contract therefore presented only state-law claims. What both the PSC and WorldCom overlook is that the Court rested its decision on a determination, informed by the particular statute's text and legislative history, that Congress "intended those contracts to be governed by state law applied in state courts." *Id.* at 29. *See* Verizon Br. 24-25. Had Congress not made its intentions so clearly known, the contracts would have been deemed "creatures of federal law," and the suit at issue would have stated federal claims. *Jackson Transit*, 457 U.S. at 23.

Congress exhibited no such intention in the 1996 Act, and this case is therefore controlled by *International Association of Machinists v. Central Airlines, Inc.*, 372 U.S. 682 (1963). *See* Verizon Br. 21-24. Because

interconnection agreements are Congress's chosen instrument for implementing the substantive duties contained in §§ 251 and 252, "their validity, interpretation, and enforceability" are matters of federal law. 372 U.S. at 691. WorldCom simply ignores *Central Airlines*, and the PSC, while purporting to distinguish the case, offers no principled basis for doing so. *See* PSC Br. 24.

Third, it is beyond dispute that, if interconnection agreements are properly considered tantamount to federal tariffs, their construction raises a federal question. *See Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533 (1983); Verizon Br. 25-29. The PSC admits, as it must, that interconnection agreements "are analogous to tariffs," but it argues that they should be considered *state* tariffs, not federal tariffs. PSC Br. 22-23. That argument is untenable, most obviously because the underlying obligations that the interconnection agreements "fulfill" (*see* 47 U.S.C. § 251(c)(1)) — the requirements of §§ 251 and 252 — are imposed by federal, not state, law. Moreover, the characteristics that give interconnection agreements their tariff-like character — that they must include "a detailed schedule of itemized charges" (*id.* § 252(a)(1)), that they must be filed and made available for public inspection (*id.* § 252(h)), that the incumbent LEC must provide service in accordance with their terms (*id.* § 251(c)(2)(D), (c)(3)), and, perhaps most important, that their provisions must be made available to all other carriers on the same terms and conditions (*id.* § 252(i)) — all reflect requirements of federal law, not state law. The PSC does not and cannot explain why the mere fact that federal law requires such agree-

C. WorldCom's claim that the district court had jurisdiction under § 1331 but that it does not have jurisdiction to decide the substance of the issues presented is incorrect and internally inconsistent. As Verizon has always made clear, its claim for relief in this case rests on the allegation that the PSC grossly misinterpreted the parties' governing interconnection agreement and thereby materially altered its terms. The district court's jurisdiction must stand or fall on whether such a claim raises a substantial federal question. WorldCom's strategy of arguing *both* that "interpretation of th[e] contract" does not raise "a federal question" (WorldCom Br. 20) *and* that Verizon's case belonged in federal court in the first instance is legally indefensible.[6]

Contrary to WorldCom's argument, Verizon's claims here depend exclusively on rights and obligations created under federal law. The suggestion that interconnection agreements are more state-law contracts ignores the reality that Verizon does not execute such interconnection agreements voluntarily but is required to submit to the coercive effect of such agreements in order to fulfill its statutory obligations under the 1996 Act. *See* Verizon Br. 20-21. The legal effect of such interconnection agreements is dictated by federal, not state, law — indeed, even if state law *barred* such

[6] Such a strategy is evidently designed simply to create the greatest possible obstacle to effective judicial review of erroneous state commission decisions — like the ones at issue in this case and in No. 00-878 —

agreements between competitors, they would remain "binding" by operation of *federal* law. *Id.* at 20-29.[7]

Just as important, WorldCom's view leads to an "incoherent jurisdictional scheme." *Bank One Chicago, N.A. v. Midwest Bank & Trust Co.*, 516 U.S. 264, 275 (1996). Under WorldCom's view, a plaintiff would have to bring suit in federal court first to determine whether a state commission's interpretive decision violates federal law — a claim that must presumably rest on some basis other than an error in interpreting an agreement's terms. Only after the federal court has ruled (and appeal rights have been exhausted) may a plaintiff pursue a claim in state court based on the state commission's supposed violation of state-law rights under the interconnection agreement. As the Seventh Circuit put it, "every time a carrier complains about a state agency's action concerning an agreement, it must start in federal court . . . and then may move to state court." No. 00-878 Pet. App. 5a. It is inconceivable that Congress would have created so inefficient a scheme.

Indeed, the Court in *Bank One* rejected an interpretation of the Expedited Funds Availability Act that strikingly resembles WorldCom's proposed interpretation of the 1996 Act. The Seventh Circuit had read the statute to require a bifurcated jurisdictional scheme in which certain types of claims "would be adjudicated in

[7] If WorldCom were right and interconnection agreements were state-law contracts, then the PSC had no jurisdiction over the parties' dispute in the first place. The PSC has jurisdiction only over claims that "allege a violation" of the state statute. Md. Code Ann., Pub. Util. Cos. § 3-102(a)(2) (1998). Nothing in Maryland law gives the PSC jurisdiction over common-law claims of breach of contract. Indeed, the implication of WorldCom's argument is that state commissions would generally have no role in interpreting or enforcing agreements once they have been approved under § 252(e). This is a position that not only WorldCom itself (and every other party to this case) but also every court to consider this issue has correctly rejected.

one forum" while other claims arising out of the same transaction "would originate in another." *Bank One*, 516 U.S. at 275. "And [other] claims under state law would presumably have to be raised in a separate state-court proceeding." *Id.* The Court refused to accept the Seventh Circuit's vision of fractured jurisdiction. "Even if the text of [the statute] could plausibly be read to create this decidedly inefficient jurisdictional scheme, we would hesitate to attribute such a design to Congress." *Id.* at 275-76.

The Court should show the same hesitancy here. Because interconnection agreements are inherently federal in nature, and because state commission decisions interpreting and enforcing those agreements are exercises of federal authority that Congress has entrusted to the state regulatory agencies, such decisions, in their entirety, are properly subject to unified federal court review.

III. THE *ROOKER-FELDMAN* DOCTRINE IS INAPPLICABLE TO DECISIONS OF ADMINISTRATIVE AGENCIES

The PSC's argument that this Court's *Rooker-Feldman* doctrine bars review here misconceives the substance of this Court's precedents. Perhaps most fundamentally, the principles of *Rooker-Feldman* do not apply here because the PSC acted pursuant to authority conferred by federal law, not state law. As the PSC notes, both the state and federal governments have the power "to transfer some adjudicatory functions to administrative agencies, with opportunity for subsequent judicial review." *Printz v. United States*, 521 U.S. 898, 929 n.14 (1997). Here, the PSC's authority to interpret and enforce interconnection agreements was granted by Congress, not by the State of Maryland. Verizon Br. 37-39. Accordingly, even if *Rooker-Feldman* were applicable to administrative

adjudications conducted under the authority of state law (and it is not), the doctrine would not apply here.

Even the dissenters in *City of Chicago* — who were otherwise skeptical about federal court review of state agency action — acknowledged the importance of this distinction. As Justice Ginsburg stated, the notion that federal courts may review state administrative action undertaken pursuant to a federal statute (in that case, the Individuals with Disabilities Education Act ("IDEA")) is unremarkable. "IDEA creates a *federal* regime. While IDEA may require federal courts to defer to state agency decisions, those decisions are made pursuant to *federal* legislation." *City of Chicago*, 522 U.S. at 180 n.4 (Ginsburg, J., dissenting). The same reasoning applies here and explains why federal court review is completely natural: the PSC's order too was issued in the exercise of authority conferred by federal legislation — the 1996 Act.

In any event, *City of Chicago* makes clear that the *Rooker-Feldman* doctrine does not apply to decisions of state agencies — even when those agencies act pursuant to a *state* administrative scheme. *See City of Chicago*, 522 U.S. at 169 ("federal jurisdiction generally encompasses judicial review of state administrative decisions"); Verizon Br. 35-37. The PSC argues that *City of Chicago* is distinguishable because there the district court's jurisdiction over claims involving on-the-record review of a state administrative order rested on 28 U.S.C. § 1367, the supplemental jurisdiction statute. PSC Br. 46-47. But that is no distinction at all for present purposes: the *Rooker-Feldman* doctrine interprets 28 U.S.C. § 1257(a) — which gives this Court jurisdiction to review judgments of a state's highest court — to foreclose such review by lower federal courts. The supplemental jurisdiction statute

provides no exception to that rule.[8] That the Court permitted on-the-record review of a state administrative adjudication in *City of Chicago* (despite a prominent reference to *Rooker* in the dissent, *see* 522 U.S. at 176-77 (Ginsburg, J., dissenting)) establishes that the limitation on jurisdiction embodied in the *Rooker-Feldman* doctrine is simply inapplicable in cases challenging decisions of state administrative agencies, as opposed to decisions of state courts. The doctrine thus poses no bar to review here.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

WILLIAM P. BARR
MARK J. MATHIS
MICHAEL D. LOWE
JOHN P. FRANTZ
1515 N. Court House Road
Suite 500
Arlington, Virginia 22201
(703) 351-3103

DAVID A. HILL
1 East Pratt Street
Baltimore, Maryland 21202
(410) 393-7725

MARK L. EVANS*
MICHAEL K. KELLOGG
SEAN A. LEV
AARON M. PANNER
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

*Counsel of Record

November 26, 2001

---

[8] *See, e.g., Fielder v. Credit Acceptance Corp.*, 188 F.3d 1031, 1039 (8th Cir. 1999); *In re Lutheran Brotherhood Variable Ins. Prods. Co. Sales Practices Litig.*, 105 F. Supp. 2d 1037, 1043 (D. Minn. 2000).